

REMARKS

I. CASE STATUS

Claims 52-55 and 118-137 are pending in this case. Claim 52 has been amended only to correct its punctuation. No substantive amendments are being made at this time.

In light of the arguments presented herein, Applicant respectfully asserts that the rejections set forth in Final Office Action mailed October 18, 2010 (“Office Action”) are erroneous, and therefore the Office Action was prematurely made final. In the interest of expediting prosecution of this case, Applicant respectfully requests that a subsequent, non-final office action be issued to address the Applicant’s arguments. Should the Examiner have any questions about this response, he is cordially invited to call the undersigned at any time.

II. EXAMINER INTERVIEW

An Examiner Interview was conducted on November 30, 2010. Applicant’s representative discussed the currently pending claims with the Examiner as well as the general applicability of the cited references, but no agreement was reached. Applicant thanks the Examiner for the courtesies extended during the Interview.

III. REJECTIONS UNDER 35 U.S.C § 101

Claims 118-126 and 137 stand rejected under 35 U.S.C § 101. Office Action, pp. 2 and 3. Particularly, the Office Action states that these claims are “drawn to a computer readable medium,” and that their “broadest reasonable interpretation” covers a “signal *per se*.” *Id.* Applicant respectfully notes, however, that these claims recite “[a]n article of manufacture including a computer readable medium...” Therefore, each of claims 118-126 and 137 falls squarely within one or more of the statutory categories of patentable subject matter. 35 U.S.C. § 101 (“Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” (emphasis added)). Accordingly, Applicant respectfully requests that the § 101 rejection of claims 118-126 and 137 be withdrawn.

IV. REJECTIONS UNDER 35 U.S.C § 103

All pending claims stand rejected under 35 U.S.C. § 103(a) over *Pavlidis* (6,995,762) in view of *Pulier* (2002/0091840). Office Action, p. 3-7. Applicant respectfully traverses. In addition, Applicant reserves the right to submit any materials to antedate these references at a later time.

As a threshold matter, Applicant notes that *Pavlidis*' filing date (Sept. 13, 2002) is later than the priority date of the present case (Jan. 15, 2002). Hence, *Pavlidis* could only be used to reject the pending claims—if at all—based on *Pavlidis*'s provisional filing of Sept. 13, 2001. And, according to the M.P.E.P.:

The 35 U.S.C. 102(e) critical reference date of a U.S. patent or U.S. application publications and certain international application publications entitled to the benefit of the filing date of a provisional application under 35 U.S.C. 119(e) is the filing date of the provisional application with certain exceptions if the provisional application(s) properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph.

M.P.E.P. § 2136.03(III) (emphasis added). Here, however, the Office Action does not establish that *Pavlidis*'s provisional application “properly supports the subject matter relied upon to make the rejection.” To the contrary, the passages of *Pavlidis* cited in the Office Action (5:45-54 and 19:62-67) do not seem to appear in *Pavlidis*' provisional filing. *See* Application No. 60/318,996. Therefore, Applicant respectfully submits that, at least as used in the Office Action, *Pavlidis* is not prior art with respect to the pending claims.

Accordingly, Applicant respectfully requests that all 35 U.S.C. § 103(a) rejections of record based on *Pavlidis* be withdrawn. Should a subsequent Office Action continue to make reference to *Pavlidis*, Applicant respectfully requests that specific citation be made to portions of its provisional application that are believed to support those rejections.

A. Overview of Cited References

1. *Pavlidis*

Pavlidis discloses a system for “solid object reconstruction from a two-dimensional image.” *Pavlidis*, Abstract. According to *Pavlidis*, “reconstruction is the process of estimating shape, volume, and surface reflectance properties o[f] an object from its images.” *Id.*, 1:24-26. As *Pavlidis* describes, “[s]olid object reconstruction can be employed in a variety of applications.” *Id.*, 19:60-61. For example,

[T]he present invention can be utilized in a parcel shipping business. The box dimensioning processes can be utilized to gather data on package sizes for volume dependent shipping charge assessment. The box dimensioning processes can also be utilized for preparing shipping vehicles and arranging shipping routes depending on the volume of packages.

Pavlidis, 19:62-67 (emphasis added). In short, *Pavlidis* discloses “[a] system for generating a three-dimensional object” from a “two dimensional view.” *Id.*, 3:24-25. As mentioned in the Examiner Interview of November 30, 2010, it is not clear what relevance, if any, *Pavlidis* would seem to have with respect to the currently pending claims.

2. *Pulier*

Pulier discloses “[a] client-side apparatus and method for handling media capable of being provided by a plurality of provided computer systems to a client computer.” *Pulier*, Abstract. According to *Pulier*, an “MPH [Multiple Provider Hosting] system includes a sniffer module 44, a statistics collector module 46, a metrics calculator module 48, and a stream switcher module 50.” *Id.*, ¶ [0012]. Notably, *Pulier*’s entire MPH system (*i.e.*, blocks 44, 46, 48, and 50) is contained within its client device (52). *Id.*, Fig. 1.

In operation, “[t]he MPH system establishes an account with several streaming media providers.... When an end user wants to access the media content, the MPH client-based system uses end user metrics and provider availability to select the best streaming media provider to

deliver the media content to that particular end user at that particular time.... During media play, and in real-time, provider bandwidth is monitored, and if it falls below a specified percentage of the required bandwidth, the MPH system switches hosting to the next provider that meets the bandwidth criteria....” *Id.*, ¶ [0008] (emphasis added).

B. Claim 52 (and accompanying dependent claims)

1. *Lack of All Claimed Elements*

Claim 52 recites, in part:

the server identifying a communication parameter associated with a client;
the server identifying a processing parameter of the client;
the server receiving a request to provide the image to the client;
the server selecting a set of the plurality of operations based at least in part on the processing parameter and the communication parameter;
the server performing the set of the plurality of operations to generate a processed image element, wherein the performing uses the stored image element; and
the server sending the processed image element to the client, wherein the client is configured to perform remaining ones of the plurality of operations using the processed image element to display the image.

(emphasis added). The Office Action alleges that *Pavlidis* discloses every element of claim 52, except that:

Pavlidis did not disclose in detail the server sending the processed image element to the client, wherein the client is configured to perform remaining ones of the plurality of operation using the processed image element to display the image.

Office Action, pp. 3-5. Contrary to the Office Action’s assertion, however, Applicant has been unable to find any passage of *Pavlidis* that would seem to teach or suggest, for example, “identifying a communication parameter associated with a client” or “identifying a processing parameter of the client.” The only passage of *Pavlidis* cited in the Office Action as allegedly disclosing these elements provides that:

The system 10 includes an image capture component 20 that receives a 2-D image. A data store 30 is part of the system and can be employed to store image related data. An image analyzer 40

analyzes the captured image--the image analyzer includes a distance analyzer 50 and scaling component 50 which are employed in connection with generating data for the object construction. Details regarding distance analysis (e.g., camera distance from 2-D image) and image scaling are discussed in substantial detail infra.

Pavlidis, 5:45-54 (cited in Office Action, p. 3). This cited passage does not teach or suggest “identifying a communication parameter associated with a client” or “identifying a processing parameter of the client,” as in claim 52. Applicant has been unable to find any other passage of *Pavlidis* that would seem to teach or suggest these elements.

Applicant further asserts that *Pavlidis* does not teach or suggest, for example, “receiving a request to provide the image to the client,” “selecting a set of the plurality of operations,” or “performing the set of the plurality of operations to generate a processed image element.” The only passage of *Pavlidis* cited in the Office Action as allegedly disclosing these elements provides that:

Solid object reconstruction can be employed in a variety of applications. For example, the present invention can be utilized in a parcel shipping business. The box dimensioning processes can be utilized to gather data on package sizes for volume dependent shipping charge assessment. The box dimensioning processes can also be utilized for preparing shipping vehicles and arranging shipping routes depending on the volume of packages.

Pavlidis, 5:45-54 (cited in Office Action, p. 4). However, this passage does not teach or suggest “receiving a request to provide the image to the client,” “selecting a set of the plurality of operations,” or “performing the set of the plurality of operations to generate a processed image element,” as in claim 52. Applicant has been unable to find any other passage of *Pavlidis* that would seem to teach or suggest these elements.

In sum, Applicant asserts that *Pavlidis* does not teach or suggest any of the aforementioned elements of claim 52. Applicant acknowledges the Examiner’s Notes on pages 7 and 8 of the Office Action, but absent a more specific showing of how *Pavlidis* is alleged to teach or suggest the elements of claim 52, Applicant respectfully asserts that it does not. And again, it is not clear what relevance or applicability *Pavlidis* is being alleged to have with respect

to the currently pending claims. In the interest of expediting prosecution of this case, Applicant respectfully requests that a subsequent, non-final office action be mailed to properly address these issues.

Applicant also acknowledges that a subsequent Office Action may attempt to rely upon *Pulier* as teaching or suggesting the elements missing from *Pavlidis*. In that regard, however, Applicant again notes that *Pulier* is a “client-based system.” *Pulier*, ¶ [0008]; *see also* Applicant’s Response to Non-Final Office Action Mailed April 28, 2010 (filed on July 27, 2010), p. 9. As a result, *Pulier* does not teach or suggest, for example, “the server identifying a communication parameter associated with a client” or “the server identifying a processing parameter of the client.” To the extent any of these operations could be thought of as being disclosed in *Pulier*, which Applicant does not concede, it would be *Pulier*’s client—not its server—that would perform such operations.

Accordingly, a combination of *Pavlidis* with *Pulier*, even if proper, does not teach or suggest the elements of claim 52. Claims 53-55 depend from claim 52 and thus are patentably distinct from the proposed combination of *Pavlidis* with *Pulier* for at least the same reasons.

2. *Improper Combination*

Applicant respectfully submits that the Office Action does not demonstrate why a person of ordinary skill in the art would combine *Pavlidis* with *Pulier*. For at least for this reason, this proposed combination is improper. Contrary to the Office Action’s assertion, *Pavlidis* and *Pulier* are not “[i]n the same field of endeavor.” *See* Office Action, p. 4. As noted above, while *Pavlidis* is concerned with “measurements of dimensions of solid objects from two dimensional image(s),” *Pulier* discloses the “optimiz[ation of] a streaming media download from a plurality of host media sources.” *Compare Pavlidis*, 1:16-20 (Technical Field) *with Pulier*, ¶ [0003] (Technical Field).

In an attempt to explain the combination, the Office Action states that:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the MPH sniffer module i[n] a client-side application that is triggered at step 106 by user access of the streaming media web page. It calculates the current bandwidth from the client machine to the web page server, checks to see whether the client has the necessary components required to experience the streaming media, etc. The information gathered by the sniffer module gives the MPH process an initial [determination] of where to start in the provider selection process. Processing continues [on] FIG. 3 as shown by the continuation indicator 108 as taught by Pulier in the method and system of Pavlidis to reduce latency and optimizing communication between the client and the server.

Office Action, pp. 4 and 5 (emphasis added). However, there does not appear to be a “server” and a “client” in *Pavlidis*. *Pavlidis* does not deal with “streaming media” or a “provider selection process.” Further, the Office Action does not explain why a person of ordinary skill in the art would be motivated to “reduce latency and optimiz[e] communications” in *Pavlidis*. It is not at all clear from the Office Action why and/or how *Pavlidis* and *Pulier* would be combined. Accordingly, Applicant respectfully requests that the 35 U.S.C. § 103(a) rejection of claims 52-55 be withdrawn.

C. Claim 118 (and accompanying dependent claims)

Although claim 118 recites elements that are different from those of claim 52, Applicant respectfully asserts that similar arguments still apply. In addition, claim 118 recites, in part:

receiving a request to provide the image to a client...;
performing [a] first portion of [a] plurality of tasks on at least a portion of the
plurality of image elements to produce a partially processed version of the
image; and
transmitting the partially processed version of the image to the client....

(emphasis added). The Office Action does not address these elements, and Applicant respectfully asserts that the proposed combination of *Pavlidis* with *Pulier* does not teach or suggest “receiving a request to provide the image to a client...; performing [a] first portion of [a] plurality of tasks on at least a portion of the plurality of image elements to produce a partially processed version of the image; and transmitting the partially processed version of the image to

the client....” For example, while *Pulier* discloses a client receiving “streaming media,” there does not appear to be anything in *Pulier* to indicate that such “streaming media” includes a “partially processed version of an image,” as recited in claim 118. *Pulier*, ¶ [0008]. At least for these additional reasons, Applicant respectfully requests that the 35 U.S.C. § 103(a) rejection of claims 118-126 be withdrawn.

D. Claim 127 (and accompanying dependent claims)

Although claim 127 recites elements that are different from those of claim 52, Applicant respectfully asserts that similar arguments still apply. In addition, claim 127 recites, in part:

receiving a request to provide [an] image to a client;
selecting between [a] processed version of the image and [an] unprocessed
version of the image, wherein said selecting is based at least in part upon
at least one characteristic associated with the client; and
transmitting the selected version of the image to the client....

(emphasis added). The Office Action does not address these elements, and Applicant respectfully asserts that the proposed combination of *Pavlidis* with *Pulier* does not teach or suggest “receiving a request to provide [an] image to a client; selecting between [a] processed version of the image and [an] unprocessed version of the image...; and transmitting the selected version of the image to the client....” For example, while *Pulier* discloses a server transmitting “streaming media,” there does not appear to be anything in *Pulier* to indicate that its server “select[s] between [a] processed version of the image and [an] unprocessed version of the image,” as recited in claim 127. *Pulier*, ¶ [0008]. At least for these additional reasons, Applicant respectfully requests that the 35 U.S.C. § 103(a) rejection of claims 127-133 be withdrawn.

E. Claim 134 and 137 (and accompanying dependent claims)

Although claim 134 and 137 recite elements that are different from those of claim 52, Applicant respectfully asserts that similar arguments still apply. In addition, claims 134 and 137 recite, in part:

receiving from [a] server an image element processed to an extent determined at least in part by [] at least one characteristic associated with [a] client device....

(emphasis added). The Office Action does not address this element, and Applicant respectfully asserts that the proposed combination of *Pavlidis* with *Pulier* does not teach or suggest “receiving from [a] server an image element processed to an extent determined at least in part by [] at least one characteristic associated with [a] client device....” For example, while *Pulier* discloses a client receiving “streaming media,” there does not appear to be anything in *Pulier* to indicate that such “streaming media” includes “an image element processed to an extent determined at least in part by [] at least one characteristic associated with [a] client device,” as recited in claims 134 and 137. At least for this additional reason, Applicant respectfully requests that the 35 U.S.C. § 103(a) rejection of claims 134-137 be withdrawn.

CONCLUSION

Applicant respectfully submits the application is in condition for allowance, and an early notice to that effect is requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above-referenced application from becoming abandoned, Applicant hereby petitions for such extension.

The Commissioner is authorized to charge any fees that may be required, or credit any overpayment, to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account No. 501505/6257-31902/LVP.

Respectfully submitted,

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